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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,529	09/27/2000	Yannick Albertone	AD6649 US NA	6969

23906 7590 12/15/2004

E I DU PONT DE NEMOURS AND COMPANY  
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EXAMINER

BOYD, JENNIFER A

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/670,529

Applicant(s)

ALBERTONE ET AL.

Examiner

Jennifer A Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-9 and 11-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-9,11-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The Applicant's Amendments and Accompanying Remarks, filed September 27, 2004, have been entered and have been carefully considered. Claim 1 is amended, claims 13 – 21 are withdrawn and claims 1 – 2, 4 – 9, 11 – 21 are pending. The invention as currently claimed is not found to be patentable for reasons herein below.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1 – 2, 4 – 9 and 11 – 12 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Beavers et al. (US 4,939,009) in view of Mueller (US 5,532,053). The details of the rejection can be found in paragraph 3 of the previous Office Action dated March 26, 2004. The rejection is maintained.

Claim 1 was amended to correct grammatical and for clarity reasons. The scope of the claim did not change thus the previously applied rejection is still applicable.

### ***Response to Arguments***

4. Applicant's arguments filed September 27, 2004 have been fully considered but they are not persuasive.

5. In response to Applicant's argument that the MVTR inequality and ratio are not inherently disclosed by Beavers or Mueller, the Examiner respectfully argues the contrary. In summary, Beavers teaches a laminate comprising a layer of copolyetherester and a layer of polyolefin sandwiching a tie layer (Abstract). The tie layer comprises a low molecular weight polyethylene and about 0.1 to about 30 weight percent of vinyl acetate (column 5, lines 9 – 17). Beavers teaches that the polyolefin layer can comprise polypropylene (column 4, lines 20 – 28). Beavers teaches that the tie layer comprises a low molecular weight polyethylene and about 0.1 to about 30 weight percent of vinyl acetate (column 5, lines 9 – 17). Mueller provides motivation for the addition of a substrate layer and to use a corona treatment on the substrate to increase bond strength. It is recognized that neither Beavers nor Mueller teaches the thickness of the vapor control layer, copolyetherester layer and tie layer and the bond strength, however, it is submitted that those are result effective variables and would be an obvious result of optimization as discussed in the rejection in paragraph 3 of the Office Action dated March 26, 2004. In combination, Beavers in view of Mueller discloses each and every physical and chemical limitation claimed by the Applicant. Because Beavers in view of Mueller discloses the Applicant's claimed invention, it is asserted that the MVTR inequality and ratio must be inherent to the product of Beavers in view of Mueller. If said MVTR inequality and ratio are not inherent, it is asserted that Applicant's claim must be incomplete. In other words, if Applicant's asserts a lack of inherency in Beavers in view of Mueller, then Applicant's claimed invention is missing an element that is critical to the invention, which would patentably distinguish it from Beavers in view of Mueller. The Applicant has indicated that the MVTR inequality and ratio are highly dependent on the thickness of each of the layers. If the claimed thickness of each of the layers

have unexpected results, the burden is upon the Applicant to demonstrate that the thickness of each of the layers are not a matter of simple optimization. The Examiner highly suggests to the Applicant to submit a 37 CFR 1.132 Declaration to establish unexpected results. In the Declaration, the Applicant should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. *In re Hill*, 284 F.2d 955, 128 USPQ 197 (CCPA 1960) and must compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness.

6. In view of Applicant's argument that Mueller teaches away from an  $MVTR_{CAS}$  that is greater than  $MVTR_{SAC}$ , the Examiner respectfully argues the contrary. It should be noted that Mueller is used as a secondary reference to provide motivation to incorporate a substrate layer and to treat the substrate layer with corona treatment. The structure of the moisture vapor control layer, tie layer and copolyetherester layer is established by Beavers. Therefore, the order of the layers of Mueller is irrelevant. If the substrate alone of Mueller is materially different than the substrate of the Applicant, the Examiner suggests that the Applicant amend the claim to differentiate the substrate of Mueller and the instant invention.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after


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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
December 4, 2004

  
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SUPERVISORY PATENT EXAMINER  
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